

REMARKS

Claims 1-2, 6, and 8-15 stand rejected under 35 U.S.C. 101. Although the Official Action sets out that claims 6, 8-12, 16-23 and 25-39 are rejected pursuant to 35 U.S.C. 103 as obvious over Fitzgerald (U.S. Pub. 2003/0191669A1) in view of Fitzgerald (U.S. Pub. 2003/0195771), in actuality it appears that claims 1-13 and 15-25 stand rejected as obvious over Fitzgerald '669 in view of Fitzgerald '771. As such, Applicant addresses below the apparent rejection of claims 1-2, 6 and 8-15 under 35 U.S.C. 101, and claims 1-13 and 15-25 under 35 U.S.C. 103.

I. Amendment After Final

Applicant respectfully requests entry of this Amendment after the issuance of the Final Official Action. Applicant respectfully submits that the amendments and remarks made herein do not necessitate a new search. Additionally and alternatively, Applicant respectfully submits that the amendments and remarks herein place the claims of the instant application in better form and condition for Appeal.

II. Rejections Pursuant to 35 U.S.C. 101

Applicant traverses the rejection of claims 1-2, 6 and 8-15, made pursuant to 35 U.S.C. 101, at least in that the claims, as-filed and as amended, do, in fact, lead to a concrete, tangible result, namely the providing of an integrated point-of-service transaction management system.

Applicant respectfully submits that the Official Action misstates the limitations of Applicant's claims, and consequently arrives at an incorrect conclusion that Applicant's claims are not concrete and tangible. Specifically, the Official Action asserts that claim 1 recites merely "tracking," however, amended claim 1 does not say merely "tracking," but rather states "at least one computerized transaction database for relationally and electronically tracking." Applicant

respectfully submits that a relational database that performs tracking is clearly concrete and tangible within the meaning of 35 U.S.C. 101, at least as indicated by the over 1,600 issued United States patents that claim a relational database. Additionally, Applicant notes that a human, let alone a natural phenomena, are incapable of the relational tracking performed by a relational database, and as such Examiner's assertion that this claim element is an "abstract idea, law of nature, or natural phenomena" is, simply put, just plain wrong. Applicant notes that a similar claim element is also present in independent claim 13, which also stands rejected under 35 U.S.C. 103, and as such Applicant submits that the above reasoning is equally applicable to claim 13.

Further, the Official Action asserts that claim 1 states "communicating with a database." Applicant respectfully submits that amended claim 1 actually states that "at least one computing terminal communicates with the at least one database." Frankly, Applicant is perplexed as to how one could logically assert that an electronic terminal engaging in electronic communication with a relational database is an "abstract idea, law of nature or natural phenomena." If such a position were correct, there would arise an extreme impediment to patentability for devices such as CPUs, cellular telephones, and almost any type of software. It goes without saying that such inventions are well within the acceptable scope of 35 U.S.C. 101, and thus so too is Applicant's claimed invention. Applicant further notes that there are well over 1,400 issued United States patents that claim an electronic communication involving a computing terminal and a database. Applicant notes that a similar claim element is also present in independent claim 13, which also stands rejected under 35 U.S.C. 103, and as such Applicant submits that the above reasoning is equally applicable to claim 13.

Finally, Applicant submits that claims 2, 6, 8-12 and 14-15 are each ultimately dependent on one of claim 1 or 13, and, as such, each of claims 2, 6, 8-12 and 14-15 are also statutory claims pursuant to 35 U.S.C. 101.

III. Rejections Pursuant to 35 U.S.C. 103(a)

With regard to obviousness of an invention, 35 U.S.C. §103(a) recites:

[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Thus, to establish a prima facie case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *MPEP 706.02(j)*.

Applicant respectfully submits that any combination of Fitzgerald '669 and Fitzgerald '771: (a) is neither taught nor suggested, explicitly or impliedly, by any of the references or by the knowledge of one skilled in the art; and (b) fails to teach the claim limitations of at least the independent claims of the present invention.

The Office Action states that Fitzgerald '669 fails to explicitly teach that the tracking correlates to an increased collection rate of at least one of payments and overdue payments.

Applicant wholeheartedly agrees with this assertion. However, Examiner then proceeds to cite Fitzgerald '771, paragraph 22 and claim 5, in support of this proposition admittedly not taught in Fitzgerald '669.

The cited portion of Fitzgerald '771 is completely unrelated to Applicant's claimed invention. The cited portion of Fitzgerald '771 makes clear that Fitzgerald '771 is directed to "collating data related to a claim for a particular patient for submission to a **payer**" (emphasis added). *Para. 0022 of Fitzgerald '771*. Likewise, claim 5 is directed to whether "payment has been made by a **healthcare payer organization**" (emphasis added). *Claim 5 of Fitzgerald '771*. The "payer" in Fitzgerald '771 is defined as the entity to whom "a claim submission is made" after Fitzgerald '771 generates "a completed claim to improve claim accuracy prior to claim submission to th[at] payer." *Abstract Fitzgerald '771*. Thus, Fitzgerald '771 is dedicated to collecting payments from healthcare payer entities, such as insurance companies and HMOs. Thus, Fitzgerald '771 has nothing to do with collecting copayments from patients at the point of service, as required by amended claims 1, 13 and 25. Simply put, the present invention has to do with collecting, by a doctor or hospital, of payments and copayments due from patients at the point of service, and Fitzgerald '771 has to do with improving the information submitted by doctors and hospitals to healthcare payer organizations in order to improve collection of payments due from healthcare organizations, and as such is not related to collecting from patients.

Examiner has previously admitted that this claim element is not present in Fitzgerald '669, and, as explained above by Applicant, this claim element is also not present in Fitzgerald '771. This claim limitation is present in each of amended claims 1, 13 and 25.

Thus, as explained in this and the previous response from Applicant, Fitzgerald ‘669 is directed to the use of an electronic system *by a patient*, whereas the claimed invention is directed to the use of an electronic system by a doctor or hospital, and Fitzgerald ‘771 is directed to improving *collection of payments from healthcare payer organizations* (insurance companies, HMOs), whereas the claimed invention is directed to improving collection of payments due from patients at the point of service. Thus, neither Fitzgerald ‘669 nor Fitzgerald ‘771 is applicable to the present invention, and as such at least amended independent claims 1, 13 and 25 are allowable over any combination of Fitzgerald ‘669 and ‘771.

Finally, Applicant submits that each of claims 2-12 and 15-24 is ultimately dependent on one of claims 1 or 13, and as such, each of claims 2-12 and 15-24 stands allowable over any combination of Fitzgerald ‘669 and ‘771.

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IV. Conclusion

Applicant respectfully requests early and favorable action with regard to the present Application, and a Notice of Allowance for all pending claims is earnestly solicited.

Respectfully submitted,

Gibbons P.C.

A handwritten signature in black ink, appearing to read 'Thomas J. McWilliams', written over a horizontal line.

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